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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,503	01/16/2004	Alfred A. Schroeder	0006-0045	7678

7590 08/18/2005

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EXAMINER

KOCZO JR, MICHAEL

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/759,503	Applicant(s) SCHROEDER ET AL.	
	Examiner Michael Koczko, Jr.	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
     4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-12 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01-16-04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's election of the group I invention, without traverse, is acknowledged.

Claims 13 to 21 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

#### ***Specification***

In the specification, page 8, line 1, it would appear that "base 42" should read --base 48--.

#### ***Drawings***

The drawings are objected to because the figure titles and the reference characters are not uniformly drawn. The lines of figure 1 are also not uniformly drawn. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR

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1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Borsanyi. Borsanyi discloses a motor driven pump having compression heads driven by the motor. The tube has sections of different diameters (see figures 1 and 4). Reciting that the tube in an “injection molded tube” is being treated as a product-by-process limitation which does not differentiate applicants tube structurally from the tube of Borsanyi.

Claims 1 to 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Guta. Guta discloses a motor driven pump having a compression head driven by the motor. The tube has sections of different diameters and a socket 29 which is readable as a “fitment” (see figure 6C). Reciting that the tube in an “injection molded tube” is being treated as a product-by-process limitation which does not differentiate applicants tube structurally from the tube of Guta.

Claims 1 to 5 are also rejected under 35 U.S.C. 102(b) as being anticipated by Huber '579. Huber '579 discloses a motor driven pump having a compression head driven by the motor. The tube has sections of different diameters and ferrules 54 which are readable as

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“fitments” (see figure 1). Reciting that the tube in an “injection molded tube” is being treated as a product-by-process limitation which does not differentiate applicants tube structurally from the tube of Huber ‘579.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 to 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of Borsanyi or Huber ‘579 in view of Magnus ‘252. Each of Borsanyi or Huber ‘579 disclose the invention substantially as claimed. However, these references do not disclose a dispenser coupled to the tube. Magnus ‘252 discloses a peristaltic pump having a dispenser 6 connected to the tube. One of the advantages of using peristaltic pumps to dispense potable liquids is the prevention of contamination of the liquid such as by pump lubricants as in non peristaltic pumps. In view of this teaching, it would have been obvious to provide the pump of either of Borsanyi or Huber ‘579 with a dispenser. Regarding claims 11 and 12, either of the pumps of Borsanyi or Huber ‘579 is inherently capable of pumping any liquid such as a beverage concentrate or a pharmaceutical. These are recitations of intended use which do not distinguish structurally over the prior art.

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***Conclusion***

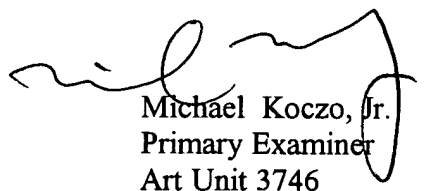
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry relating to patent applications in general should be directed to the Patent Assistance Center at 1-800-786-9199.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Koczo, Jr. whose telephone number is 571-272-4830. The examiner can normally be reached on M-Th; 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached at 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Koczo, Jr.  
Primary Examiner  
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